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No. 95-286

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,

Petitioners,

versus

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal, First Circuit, State Of Louisiana

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. May the State of Louisiana, through its Department of Revenue and Taxation, impose a Louisiana Severance Tax, LA. R.S. 47:631, *et seq.*, on the natural resources extracted by a mineral lessee during the taxable period January 1, 1980 through February 28, 1986, from the surface of the earth, the ground location of which lies within Barksdale Air Force Base Acquired Lands of the United States of America, the jurisdiction concerning which is vested in the Department of the Interior?

2. Is the State of Louisiana's collection of a severance tax on the natural resources extracted by a mineral lessee within a federal enclave (Barksdale) violative of Article 1, Section 8, Clause 17, of the Constitution of the United States of America?

3. Is Louisiana's severance tax a tax "levied on, with respect to, or measured by, net income, gross income, or gross receipt" within the meaning of The Buck Act, 4 U.S.C. §§106(a) and 110(c)?

PARTIES

The Petitioners' listing of the parties to the proceeding is correct; however, the name of the Secretary, Department of Revenue and Taxation for the State of Louisiana, is the Honorable Ben Morrison.

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MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,

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On Petition For A Writ Of Certiorari To The Court Of Appeal, First Circuit, State Of Louisiana

RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, BEN MORRISON, SECRETARY OF THE DEPARTMENT OF REVENUE AND TAXATION, STATE OF LOUISIANA [hereinafter the "Department"], respectfully requests that this Court deny the Petition for a Writ of Certiorari seeking relief from the Opinion of the Court of Appeal, First Circuit, State of Louisiana, in this case. That Opinion is reported at 648 So.2d 1108 (1994) and has been reproduced in Petitioners' Appendix A at Pages 1a through 16a.

COURSE OF THESE PROCEEDINGS BELOW

Two tax refund suits were filed by Petitioners in the court of original jurisdiction, the 19th Judicial District Court for the Parish of East Baton Rouge, Louisiana. They were subsequently consolidated and tried.

The Question Presented to the Trial Court for resolution was:

> May the State of Louisiana, through its Department of Revenue and Taxation, impose a Louisiana Severance tax, LA. R.S. 47:631, *et seq.*, on the natural resources extracted by a mineral lessee during the taxable period December, 1979 through the date of final judgment herein, from the surface of the earth, the ground location of which lies within Barksdale Air Force Base Acquired Lands of the United States of America, the jurisdiction concerning which is vested in the Department of the Interior?

ACTION IN THE COURT OF ORIGINAL JURISDICTION, THE NINETEENTH JUDICIAL DISTRICT COURT, EAST BATON ROUGE PARISH, LOUISIANA

The District Court, Honorable William H. Brown, Presiding Judge, determined that: (1) The Louisiana Severance Tax is an "Income Tax" under the Buck Act [4 U.S.C. §§105-110]; and (2) The Mineral Leasing Act for Acquired Lands as amended in 1976 [30 U.S.C. §§351 *et seq.*] applies to these [Barksdale] leases, and concluded that:

> The Louisiana General Severance Tax L.S.A.-R.S. 47:633, is a valid, enforceable tax under Louisiana law on the withdrawal of minerals from the earth below surface owned by the U.S. Government. There is no indication that Congress ever intended private petroleum companies to benefit from the exclusion of federal

> land from state taxation by allowing them to escape a lawfully enacted tax. The constitutional authority and the machinery to thwart this taxation, if thought unacceptable, is available to Congress. *Commonwealth Edison v. Montana*, 453 U.S. 609, 101 S.Ct. 2946, 69 L. Ed. 2d 884 (U.S. 1981). (White, J. concurrance[sic]). There is no congressional legislation forbidding taxation of this income. Therefore, it is held that the Louisiana Severance Tax is valid and enforceable under Constitutional guidelines and Louisiana Law.

MRT Exploration Company, et al v. McNamara; Rosewood Resources, Inc. v. McNamara, No. 262,928 Div. I and 323,597 Div. M (19th Judicial District Court, Parish of East Baton Rouge, Louisiana, January 18, 1990) unreported. Petitioners' Appendix C, Pages 19a through 25a.

ACTION IN THE INTERMEDIATE APPELLATE COURT THE COURT OF APPEAL FOR THE FIRST CIRCUIT

The Court of Appeal affirmed the trial court's decision that the tax was valid and enforceable, stating:

> As noted by the court in **Humble Oil and Refining Company v. Calvert**, 478 S.W.2d 926 (Tex. 1972), *cert. denied*, 409 U.S. 967, 93 S.Ct. 293, 34 L. Ed. 2d 234, the broad definition of "income tax" contained in the Buck Act was intended by Congress:
>
> > The Congressional intent is strongly stated in the bill's Senate Report where it is stated that "[t]his definition [of income tax] . . . must of necessity cover a broad field because of the great variations to be found between the different State laws. The intent of your committee in laying down such a broad definition was to include therein any State tax (whether known as a corporate-

franchise tax, or business-privilege tax, or any other name) if it is levied on, with respect to, or measured by net income, gross income, or gross receipts."

Therefore, we agree with the trial court's determination that the amendment to the Louisiana Severance Tax rendered it an "income tax" within the meaning of the Buck Act. *See* **Humble Oil and Refining Company**, 464 S.W.2d 170, 175-176 (Tex. Civ. App. 1971).

Plaintiffs argue that if this court determines the Louisiana Severance Tax is an "income tax" under the Buck Act, the opinion of the trial court must be modified because it recognized that the severance tax on natural gas remained a volume-based tax.

The Louisiana legislature modified the provisions of paragraph 7 and 8 of LSA-R.S. 47:633 to provide that the imposition of the Louisiana Severance Tax on oil and condensate would thereafter be based on a percentage of the value of the minerals severed at the time and place of the severance. However, no amendment was made to the provisions of paragraph 9 of LSA-R.S. 47:633, which sets forth the method of determining the amount of severance tax due on the severance of natural gas and its equivalents. Therefore, the severance tax on natural gas and its equivalents remains a volume-based tax.

However, because we find that the Louisiana Severance Tax may be imposed as a result of the 1976 amendment to the Mineral Leasing Act for Acquired Lands, this contention is without merit.

* * * *

The trial court concluded that the 1976 amendment to the Mineral Leasing Act for Acquired Lands should govern in the case of

> these corporate leases. The court noted that the power of the states to impose severance taxes on minerals extracted by lessees of the United States was strengthened by this amendment. The trial court concluded that all of the disputed taxes were assessed after the 1976 amendment to the Mineral Leasing Act for Acquired Lands, and the amendment applies to all Louisiana leases regardless of when the leases were executed.
>
> After our review of the foregoing statutes, we find that the trial court was correct in its determination that the 1976 amendment to the Mineral Leasing Act for Acquired Lands is applicable to the leases in the instant case.

MRT Exploration Company, et al. v. McNamara; Rosewood Resources, Inc. v. McNamara, 94 0063, 94 0064 (La. App. 1 Cir. 12/29/94), 648 So.2d 1108, *rehearing denied* (1995). Petitioners' Appendix A, Pages 1a through 16a.

An Application in the Court of Appeal for a Rehearing was denied. Petitioners' Appendix A, Page 1a.

ACTION IN THE SUPREME COURT OF LOUISIANA

The Supreme Court of Louisiana denied Petitioners' Application for a Writ of Certiorari. *MRT Exploration Company Mississippi River Transmission, et al. v. Shirley McNamara [sub nom Ralph Slaughter] Secretary, Louisiana Department of Revenue*, 654 So.2d 1083 (La. 1995).[1]

---

[1] A remand was ordered by the Supreme Court of Louisiana for a reason not pertinent here, i.e. the taxable period from 1979 - to - 1982 as governed by a Reconventional Demand. This limited remand has been set for Argument before the Louisiana Court of Appeals for the First Circuit on September 18, 1995. The outcome of that Hearing will not be determinative of any issues posed for consideration by this Court.

JURISDICTION

The jurisdiction of this Court was timely invoked by the Petitioners pursuant to 28 U.S.C. §1257.

THE UNDERLYING FACTS

After four years of intense political lobbying effort therefor, on December 4, 1928, Shreveport, Louisiana, was selected as the new home of the Third Air Attack Group, Army Air Service, which had theretofore been located at Galveston, Texas. Where an aerodrome was to be located immediately became of pressing importance. Various locations within Caddo Parish, Louisiana, where Shreveport is located, were entertained, considered and eventually rejected by the Secretary of War and his staff for various reasons. However, a suitable location was agreed upon in the adjoining Parish of Bossier.

Since the funding for the acquisition of the property at the selected location was to consist of monies derived from a bond issue approved by the Shreveport, Louisiana populace, and because the laws of Louisiana failed to accommodate a transaction whereunder a city in one parish could expropriate property lying in another parish, a series of statutory provisions were approved. The first of these was Louisiana Acts 1928, No. 43 which, upon a popular vote thereof, amended Louisiana's Constitution, Article IV, Section 12 of the [1921] Constitution. This Constitutional provision became the cession provision for the donation by the State of a political subdivision thereof to the United States of lands in connection with, in pertinent part, the use "**as airports, flying fields, landing fields,. . . . military posts, and for military uses.**" *See* **Appendix C-1.** In the same Session of the Louisiana Legislature, Louisiana Acts 1928, No. 24 was passed. This Act [in pertinent part] permitted municipalities and police juries to expropriate, and thereafter donate to the United States of America, any property

which they might own, for use as "**airports, flying fields, landing fields,. . . . bombing ranges, military posts,. . . . and for other military purposes.**" *See* **Appendix C-2.**

It was immediately discovered that this provision would not accommodate Shreveport's needs because, by its express terms, it was limited to properties lying within Shreveport or Caddo Parish. Louisiana Acts 1928, Extra Session No. 5, corrected this oversight concerning the ownership of properties to be used for "**airports, flying fields, landing fields,. . . . bombing ranges, military posts,. . . . and for other military purposes.**" *See* **Appendix C-2.** Having thus authoritatively vested Shreveport and Caddo Parish with such authorization, by Louisiana Acts 1930, No. 4, the State of Louisiana itself authorized the donation of water beds whether navigable or non-navigable to the United States of America for [in pertinent part] "**an air port[sic], flying field, land,[sic] field, military post and for military purposes.**" *See* **Appendix C-3.** Thereafter, Louisiana Acts 1940, No. 75 enabled and ratified authority for the State of Louisiana or any of its political subdivisions to donate property to the United States for [in pertinent part] "**(4) Airports, flying fields, landing fields,. . . . military posts and for any military purposes.**" *See* **Appendix C-4.** When the Louisiana Legislature revised its Statutes in 1950, Louisiana Acts 1940, No. 75 became LA. R.S. 52:2. *See* **Appendix C-6.**

All of the "Special" Barksale Statutory Provisions, in pertinent part, are compiled and reproduced at **Appendix C-7.** The purpose of that compilation is to negate the Petitioners' suggestion to this Court that the cession provision for the acquisition of Barksdale was governed by Louisiana Acts 1892, No. 12 §§1 and 2, as amended by Louisiana Acts 1942, No. 31, §1 and as carried into the Revised Statutes of 1950 as LA.R.S. 52:1.

The area determined by the Secretary of War to be suitable for an aerodrome embraced an area approximately five miles wide and nine and one-half miles long.

The airfield was to cover 21,705 acres of land, and was to be located in Bossier Parish, some three and one-half miles from Shreveport. The land was acquired by the City of Shreveport and donated to the United States of America on November 8, 1930, as accepted on November 18, 1930 by Patrick J. Hurley, the Secretary of War, for and on behalf of the United States of America for "**a military post, flying field and bombing range.**" Two additional donations were made, one by the State of Louisiana consisting of "all of the beds of the streams, lakes, bayous and lagoons, whether navigable or non-navigable, lying within . . . " (the area donated by Shreveport) on August 30, 1930, as accepted on November 18, 1930 by Patrick J. Hurley, the Secretary of War, for and on behalf of the United States of America for "**an airport, flying field, landing field, military post and military uses,**" and the other by the Board of Commissioners of the Bossier Levee District consisting of property within the same locale on the 5th day of February, 1930 as accepted on November 18, 1930 by Patrick J. Hurley, the Secretary of War, for and on behalf of the United States of America for "**a military post, flying field and bombing range.**" The Secretary of War had been authorized by Congress to accept these donations. *See* the Barksdale Congressional Acts February 25, 1929, 45 Stat. 1304 [this Act has not been codified], **Appendix B-1**, and July 1, 1930, 46 Stat. 843 [this Act has not been codified]**Appendix B-1**. The property became known as Barksdale Field (heretofore and hereafter "Barksdale"), then the largest airfield in the world.

The United States Government soon realized that it was losing substantial income as a result of the drainage by mineral leases of adjoining land owners who were producing oil, gas and other minerals from reservoirs located both beneath Barksdale and its adjoining lands. At this time the only Acts of Congress pertaining to the granting of oil, gas and mineral leases were those relating to "**Indian lands**" (Act of June 28, 1906 [34 Stat. 543, 25

U.S.C. §396b]); Act of May 27, 1908 [35 Stat. 312. This Act has not been codified.]; Act of March 3, 1909 [35 Stat. 783, 25 U.S.C. §396]; Act of August 21, 1916 [39 Stat. 519. This Act has not been codified.]; and Act of May 11, 1938 [52 Stat. 347, 25 U.S.C. §§396a-396b]) and "**Domain lands**" (The Mineral Leasing Act of 1920 [Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. §§181 *et seq.*]). The lands comprising Barksdale were neither Indian lands nor Domain lands. Since both of such lands, whether Indian or Domain, could be leased under the auspices of the United States Department of the Interior, the question was posed at a Presidential cabinet meeting why Barksdale type lands, which were Acquired lands, could not be leased for mineral development under similar lease forms, rules and regulations, etc., as these other type lands, primarily the Domain lands.

In furtherance of the desirability of the prevention of drainage, the Attorney General of the United States issued an Opinion to the President that such lands could be leased. "Authority to Protect Oil Deposits Against Drainage." 40 Op.A.G. 41. **Appendix Page E-1**

In relying on this advice from the Attorney General of the United States, President Franklin D. Roosevelt, issued Executive Order 9146, "Authorizing the Secretary of the Interior to Withdraw and Reserve Public Lands." 7 F.R. 3067. **Appendix Page F-1**. The following year, President Roosevelt issued Executive Order 9337, which superseded Executive Order 9146, "Authorizing the Secretary of the Interior to Withdraw and Reserve Lands of the Public Domain and Other Lands Owned or Controlled by the United States." 8 F.R. 5516. **Appendix Page F-2.** In furtherance of advice rendered by the Attorney General of the United States, President Harry S. Truman issued Executive Order 10355 which superseded Executive Order 9337 "Delegating to the Secretary of the Interior the Authority of the President to Withdraw or Reserve

Lands of the United States for Public Purposes." 17 F.R. 4831. **Appendix Page F-3.**

As used in these Executive Orders and the Public Land Orders, "Withdrawal" is defined as transferring jurisdiction over an area of federal land from one Department (the Air Force) to another Department (Interior). 43 CFR §2300.0-5 (h).

Pursuant to a 1910 Act of Congress (codified as 43 U.S.C. §141, *et seq.*) the Secretary of the Interior issued four Public Land Orders – Public Land Order 701, **Appendix G-1**, Public Land Order 884, **Appendix G-4**, Public Land Order 1807, **Appendix G-7**, and Public Land Order 2178, **Appendix G-9**, pertaining to Barksdale, each of which (a) transferred jurisdiction over certain described Barksdale lands from the Department of the Air Force to the Department of the Interior; (b) authorized action to prevent Barksdale (mineral) drainage; (c) authorized the Air Force to stipulate reservations and restrictions to be contained in the proposed Barksdale leases; and (d) required preclearance by the Air Force before any Barksdale (mineral) lease could be issued that would interfere with the primary use of the Barksdale Air Force Base. The first Public Land Order, 701, and the fourth Public Land Order, 2178, relate to the demised premises of the mineral leases involved in this litigation.

Under the authority of these Executive Orders and Public Land Orders, which transferred jurisdiction over certain described Barksdale land from the Department of the Air Force to the Department of the Interior, and after the four prong test required by these Public Land Orders had been met, the Bureau of Land Management, represented by the Secretary of the Interior, granted the following oil, gas and mineral leases pertinent here:

Number	Effective Date	Lessee
BLM-A-024527	August 1, 1951	W.R. Stephens, III and National Gas and Oil Corporation
BLM-A-054489	February 1, 1961	Shell Oil Company
BLM-A-054490	February 1, 1961	Shell Oil Company
BLM-A-054491	February 1, 1961	Union Producing Company

These leases [now held by Petitioners] are at issue in this litigation. In pertinent part, each of these four leases provided, in Sec. 2(k) thereof:

> (k) Taxes and wages – Freedom of purchase. – To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil, and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States.

All of the demised premises in these leases were within the area where jurisdiction was transferred from the Department of the Air Force to the Department of the Interior, and none of the demised premises were located within the area for which use was required by Barksdale and invasion was prohibited.

As to each well subsequently drilled on the demised premises of these leases, the following events occurred:

1. The Department of the Interior was notified of each such proposal, so that the Department of the Air Force could satisfy itself that the anticipated mineral development would not interfere with the primary use of Barksdale Air Force Base; and

2. Application was then made by the lessee to the Louisiana Department of Conservation for a permit to drill each well and for Unitization Orders relating thereto. The applicable fees and costs were paid by the lessee to the Louisiana Department of Conservation, and the usual, customary and required drilling reports and other pertinent information were furnished by the lessee to the Louisiana Department of Conservation.

REASONS WHY THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

THE LAW APPLICABLE TO THE FACTS ADDUCED

Since the issues relate to the taxation by Louisiana concerning minerals lying beneath Public Lands, one must determine what is meant by Public Lands. Congress has provided a definition for our use:

> (E) The term "public lands" means any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except:
>
> (1) Lands located on the Outer Continental Shelf; and
>
> (2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

Federal Land Policy and Management, 43 U.S.C. §1702(e).

In establishing its unwavering policy of permitting state taxation concerning the extraction of minerals underlying these Public Lands, Congress has addressed the issue both as it affects Domain lands, and as it affects Acquired lands. As one text writer commented:

> In the case of federally owned public lands, there are two classifications: the public domain

> and acquired lands. In addition to public lands, the federal government also supervises Indian Lands. The public domain is land acquired by the federal government by treaty. Acquired land is land purchased or condemned by or donated to the federal government. In general, the Leasing Act of 1920, as amended, 30 U.S.C.A. §226 governs the leasing of both types of federal public land. See also 30 U.S.C.A. §351.

Oil and Gas Law, Williams and Meyers, Vol. 8, Manual of Terms. Both of these quoted Acts provide for state taxation. *See* 30 U.S.C. §§189 and 357.

Although substantively and procedurally statutorily interrelated, each of these, Domain lands and Acquired lands, will be separately discussed so that this Congressional policy permitting state taxation on the output of minerals lying beneath the soil of public lands may be abundantly clear.

THE FEDERAL LEASING OF DOMAIN LANDS

Federal Acts Concerning Mineral Lands Which Predated the Mineral Lands Leasing Act of February 25, 1920

The first federal act directly relating to mineral lands was known as the Preemption Act of 1841 (Act September 4, 1841, 5 Stat. 455). This Act provided that no preemption entry should be made on "lands on which are situated any salines or mines." Similar provisions were made in subsequent Acts. *See* 10 Stat. 145, 12 Stat. 410, 12 Stat. 489, and 13 Stat. 356. In 1866 Congress passed Act July 25, 1866, 14 Stat. 251, which provided that mineral deposits in lands belonging to the United States were open to exploration and purchase. *See* 30 U.S.C. §22; *see also* Act May 10, 1872, 17 Stat. 91. These Acts did not, however, apply to oil and gas deposits concerning which little information was then known. It was not until 1891 that persons desiring to obtain rights in potential oil deposits on the public lands were permitted to do so under the

Placer Mining Law, Act March 3, 1891, 26 Stat. 1097, 30 U.S.C. §35, *et seq.*

The Mineral Lands Leasing Act of 1920

Because of the unsatisfactory operation of the Placer Act, lands potentially valuable for oil, gas and related minerals were withdrawn from entry by Presidents Theodore Roosevelt and William H. Taft. The history of many of these withdrawals is related in, and their validity upheld in, *U.S. v. Midwest Oil Company*, 236 U.S. 459 (1915). After the first withdrawals, President Roosevelt sent a message to Congress suggesting "that there should be some provision for leasing coal, oil and gas rights." 41 Cong. Rec. 450 (1906); 41 Cong. Rec. 2077 (1907). For other similar discussions, *see* 50 Cong. Rec. 15058 (1914) and 51 Cong. Rec. 15064-65 (1914). During the House debate on an early version of the Mineral Lands Leasing Act of 1920 (H.R. 16136, 63d Cong., 2d Sess. (1914)), Western legislators expressed concern that under the bill the States might be unable to tax the production of federal lessees. Representative Lenroot of Wisconsin took the lead in answering Western fears by pointing out that a "State can tax the product of that mine [leased under the bill] just such sum as it [the State] chooses." 51 Cong. Rec. 15058 (1914). Although the bill under consideration in the debate mentioned above contained no express recognition of state taxing power, this was remedied in the next Congress when the House Committee on Public Lands offered an amendment to the pending leasing bill. After minor changes in the committee's proposal, the House adopted the amendment, which contained language nearly identical to that ultimately enacted as section 32 of the Mineral Lands Leasing Act of 1920. The amendment adopted by the 64th Congress read:

> Provided that nothing in this act shall be construed or held to affect the rights of the States or other local authority to exercise any rights

> which they may have to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessees.

53 Cong. Rec. 1122-1123 (1916). The adoption of the amendment reflected that view.

The Mineral Lands Leasing Act of February, 1920

The Mineral Lands Leasing Act of 1920 [Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. §181, *et seq.*] was the first federal legislation authorizing the leasing of lands in the United States of America for oil and gas development. Initially, the act did not provide for the issuance of leases as we know them; instead, it provided for the issuance of oil and gas prospecting permits. Through the years the Act underwent many changes. However, Congress *never* altered the provisions of Section 32 of the Act [30 U.S.C. §189]. In the House debate immediately preceding passage of the 1920 Act, [the Mineral Lands Leasing Act of 1920, 41 Stat. 437, 30 U.S.C. §181 *et seq.*]. Representative Mondell again stressed that the proviso affirmed state power to tax leasehold improvements and mine output of federal lessees. 58 Cong. Rec. 7646 (1919). Despite protests that under the proviso the states would have the power to levy "burdensome taxes" and thereby ruin lessees and render the leases of no value [58 Cong. Rec. 7647 (1919) remarks of Rep. McLaughlin], Congress passed section 32 without further changes.

Congress thus intended by section 32 to grant the states permission to impose severance taxes on coal and other minerals at the rate the states themselves deemed appropriate. Both proponents and opponents of section 32 agreed that the proviso had that purpose and effect. Section 32 was codified as 30 U.S.C. §189. It reads:

> §189. Rules and regulations; boundary lines; State rights unaffected; taxation
>
> The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this chapter. Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States. (Feb. 25, 1920, c. 85, §32, 41 Stat. 450).

Shortly after the passage of this Act, this Court had occasion to consider the provisions of Section 32. In its decision, this Court held:

> Whether the company, under its leases, is an agency, means, or instrumentality of the United States, or, in the absence of congressional consent, would be outside the reach of state taxation, we need not stop to consider, since we are of opinion that the authority of the state exists in virtue of such consent Section 32 (41 Stat. at L. 450) of the act contains the following proviso: "Provided, That nothing in this act shall be construed or held to affect the rights of the states or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States."
>
> The contention on behalf of the company is that this proviso, which saves from the effect of any possible adverse construction of the act, rights of the states "which they may have," *existing* rights only, – that is to say, rights existing

> when the act was passed. But we find nothing in the body of the act which, by any stretch of meaning, purports to detract from or render less certain any such pre-existing rights; and, in that view, the theory advanced fails for want of material upon which to operate. It fairly cannot be supposed that Congress would indulge in the altogether idle ceremony of enacting a law to save rights which, being in no way challenged or affected, stood in no need of being saved. The more natural view, and the one we adopt, is that Congress, having provided for leasing the public lands to private corporations and persons whose property, income, business, and occupations ordinarily were subject to state taxation, meant by the proviso to say in effect that, although the act deals with the letting of public lands and the relations of the government to the lessees thereof, nothing in it shall be so construed as to affect the right of the states, in respect of such private persons and corporations, to levy and collect taxes as though the government were not concerned. In other words, the purpose of Congress was to remove altogether from the field of controversy, among other questions, the very question which is here presented, and to put beyond doubt the authority of the states to impose taxes upon lessees in respect of their property, although arising from, and in respect of, their taxable rights, although exercised under the act, without regard to the origin thereof, or to the interest of the United States in the lands or leases.

Mid-Northern Oil Company v. Walker, 268 U.S. 45, 48-49 (1925).

This Court more recently had another occasion to interpret the provisions of Section 32 of the 1920 Act. The Court affirmed its holding in *Mid-Northern*. In so doing, this Court held:

Section 32, as set forth in 30 USC §189 [30 USCA §189], provides in pertinent part:

> "Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States."

This Court had occasion to construe §32 soon after it was enacted. The Court explained:

> "Congress . . . meant by the proviso to say in effect that, although the act deals with the letting of public lands and the relations of the [federal] government to the lessees thereof, nothing in it shall be so construed as to affect the right of the states, in respect of such private persons and corporations, to *levy and collect taxes as though the government were not concerned*. . . .
>
> * * *
>
> "We think the proviso plainly discloses the intention of Congress that *persons and corporations contracting with the United States under the act, should not, for that reason, be exempt from any form of state taxation otherwise* lawful." Mid-Northern Oil Co. v. Walker, 268 U.S. 45, 48-50, 69 L Ed 841, 45 S Ct 440 (1925) (emphasis added [by the Court]).

Commonwealth Edison Co. v. Montana, 453 U.S. 609, 631 (1981).

THE FEDERAL LEASING OF ACQUIRED LANDS

The Act Entitled Lease of Mineral Deposits Within Acquired Lands, Act of August 7, 1947 [61 Stat. 913, 30 U.S.C. §351, *et seq.*]. As Amended by Act of August 4, 1976 [90 Stat. 1083, 30 U.S.C. §352]

On August 7, 1947, Congress passed an Act entitled Lease of Mineral Deposits Within Acquired Lands [Act August 7, 1947, 61 Stat. 913, 30 U.S.C. §351 *et seq.*]. This Act included "[A]ll lands heretofore or hereafter acquired by the United States to which the 'Mineral Leasing Laws' have not been extended . . . ", Section 2 of the Act [30 U.S.C. §351]. Section 3 of the Act, however, excluded mineral "deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands . . . " [30 U.S.C. §352].

The Act of August 4, 1976 (90 Stat. 1090, 30 U.S.C. §352), amended Section 3 "by striking out '(b) set apart for military or naval purposes, or (c)'." All of the oil and gas and other minerals produced from Barksdale sought to be taxed by the severance tax at issue here were produced subsequent to, and therefore covered by, this Act as amended on August 4, 1976. The earliest date for taxes herein sought is for the taxable period of December, 1979.

Section 3 of the Act also tied the Act to the Mineral Lands Leasing Act (41 Stat. 437, 30 U.S.C. §181 *et seq.*) by providing that these acquired lands "may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof." [30 U.S.C. §352].

Section 8 of the Act provided:

> Sec. 8. Nothing contained in this Act shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties

> covered by leases issued under this Act, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

[30 U.S.C. §357.] This section is taken almost verbatim from the 1916 Amendment as introduced and passed in the 64th Congress. *See* page 15 *ante*, as well as the language in the second sentence of Section 32 of the Mineral Leasing Act of 1920, *see* page 15 *ante*. Nothing in any congressional act then or since has indicated that these provisions should in any way be interpreted and applied in differing manners. Functionally, they are indistinguishable. A side by side presentation of these two provisions make their relationships absolutely clear:

§189. Rules and regulations; boundary lines; unaffected; taxation	§357. State of local government rights; State rights taxation
* * * Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of lessee of the United States.	Nothing contained in this chapter shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties covered by leases issued under this chapter including the right to levy and collect taxes upon improvements, output of mines or other rights, property, or assets of any lessee of the United States.
(Feb. 25, 1920, c. 85, §32, 41 Stat. 450)	(Aug. 7, 1947, c. 513, §8, 61 Stat. 915)

Additionally, it is to be noted that the two Leasing Acts have been tied together by cross reference in the Lease of Mineral Deposits Within Acquired Lands, and both of the

Leasing Acts were amended at the same time and in the same Act of August 4, 1976 [90 Stat. 1083, 30 U.S.C. §352].

Section 10 of the Act provided that "[T]he Secretary of the Interior is authorized to prescribe such rules and regulations as are necessary and appropriate to carry out the purposes of this Act, which rules and regulations shall be the same as those prescribed under the mineral leasing laws [the Mineral Lands Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. §181 *et seq.*)] to the extent that they are applicable." [30 U.S.C. §359.]

Petitioners' contentions that there is a distinction between the laws governing Domain lands and those relating to Acquired lands is one without a difference. At all times pertinent to the taxable period in this proceeding, the two Acts are read together. They are as one. As a result of Congress's passage of the Federal Coal Leasing Amendments Act of 1975, §12(a), Pub. L. No. 94-377, 90 Stat. 1090 [codified at 30 U.S.C. §352 (1976)] the military exclusion from the statute concerning Acquired lands was removed and the statutory provisions of both the Mineral Lands Leasing Act of 1920, 41 Stat. 437 (1920) Title 30 U.S.C. Section 181, *et seq.*, and the Mineral Leasing Act for Acquired Lands of 1947, 61 Stat. 913 (1947) Title 30 U.S.C. Section 351, *et seq.*, were tied together. To agree with Petitioners' position would require this Court to interpret the current Section 352 of the Mineral Leasing Act for Acquired Lands in a way that defies common sense and the ordinary meaning of words. When Congress speaks, its words become law.

THE BUCK ACT

Louisiana Acts 1973, Ex. Sess. No. 6 amended paragraphs 7 and 8 of LA. R.S. 47:633 (to be effective January 1, 1974). By this amendment the severance tax on oil, distillate, condensate, or similar natural resources was changed from a measurement based upon quantity to a measure based upon value. Since the Louisiana severance tax on oil, distillate, condensate or similar mineral

resources is now measured upon value, the provisions of the Buck Act clearly cover the issues herein as they relate to oil and condensate. 4 U.S.C. §106. *See* **Appendix A-1**. The Buck Act is applicable to any tax based upon value. In discussing the Buck Act this Court has held that it was the intention of Congress to afford the Buck Act the broadest possible construction. To emphasize the point, this Court italicized the words "any tax" as they appeared in the sentence "The grant was given within the definition of the Buck Act, and this was for *any tax* measured by net income, gross income, or gross receipts." In discussing the modification of the United States exclusive jurisdiction by the application of the Buck Act, this court held:

> [T]he right is specifically granted to the city of Louisville as a taxing authority of Kentucky to levy and collect a tax measured by the income or earnings of any party "receiving income from transactions occurring or services performed in such area was not a Federal area." In other words, Kentucky was free to tax earnings just as if the Federal Government were not there.
>
> But the appellants next argue that the Court of Appeals erred in holding that the city's occupational tax or license fee was an "income tax" within the meaning of the Buck Act, though holding that this tax or fee was not an income tax under the Constitution of Kentucky.
>
> Was this tax an "income tax" within the meaning of the Buck Act? In a prior case, Kentucky had held this tax was not an "income tax" within the meaning of the Constitution of Kentucky but was a tax upon the privilege of working within the City of Louisville. *Louisville v. Sebree*, 308 Ky 420, 429-431, 214 SW2d 248, 253, 254. But the right to tax earnings within the area was not given Kentucky in accordance with the Kentucky law as to what is an income tax. The grant was given within the definition of the

> Buck Act, and this was for *any tax* measured by net income, gross income, or gross receipts. In the instant case, the Kentucky Court of Appeals correctly stated that the question was whether the tax was an income tax within the meaning of the federal law. We hold that the tax authorized by this ordinance was an income tax within the meaning of the Buck Act. The City, it is conceded, can levy such a tax within its boundaries outside the federal area. By virtue of the Buck Act, the tax can be levied and collected within the federal area, just as if it were not a federal area.

Howard v. Commissioners of Louisville, 344 U.S. 624, 628-629 (1953) (emphasis in original). The *Howard* case has been followed across the land in both the state and federal courts. Many different taxes [although not necessarily considered an income tax by state law] have been upheld under the auspices of the Buck Act, as construed by the *Howard* case. Notably, as the tax relates to the severance of natural resources, is the case of *Humble Oil & Refining Company v. Calvert*, 464 S.W.2d 170 (Civ. App. Texas 1971) wherein the Texas civil appellate court held:

> The Buck Act defines "income tax" as "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts." 4 U.S.C.A. Sec. 110(c).
>
> Appellant maintains that inasmuch as in both the tax on oil and gas that the tax is measured by units of volume, that the tax is not a Buck Act tax and cite Mississippi River Fuel as authority for this contention.
>
> We do not agree. Every tax on the "value" of any commodity must of necessity be measured by some type of unit whether it be barrels, cubic feet or dollars. We agree with the State's contention that the taxes here are measured on the value of the oil and gas in each instance, whatever the formula and that the purpose of

the tax is to secure revenue for the State. By calling the tax an occupation tax or a severance tax, or whatever else, begs the question. The purpose of the tax is to bring "income" to the State for revenue purposes.

Id. at 175.

On appeal the Texas Supreme Court held:

2. The Buck Act

The second contention of the State is that by operation of the Buck Act, the taxes are sanctioned. The Buck Act was enacted by the Congress in 1940 to enable the states to impose certain taxes including "income taxes" within federal enclaves. "Income tax" is defined very broadly to mean "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts." (Emphases added).

The congressional intent is strongly stated in the bill's Senate Report where it is stated that "[t]his definition [of income tax] . . . must of necessity cover a broad field because of the great variations to be found between the different State laws. The intent of your committee in laying down such a broad definition was to include therein any State tax (whether known as a corporate-franchise tax, or business-privilege tax, or any other name) if it is levied on, with respect to, or measured by net income, gross income, or gross receipts."

* * *

The Buck Act "income tax" broadly defined as it is, refers to the broad generic class of taxes upon income. It does not require that the tax be denominated an income tax or that it conform to the federal income tax. If the tax in question is based upon income and is measured by that income in money or money's worth, as a net

> income tax, gross income tax, or gross receipts tax, it is an "income tax."

Humble Oil & Refining Company v. Calvert, 478 S.W.2d 926, 929, 930 (Tex. 1972), *cert. denied*, 409 U.S. 967 (1972).[2]

---

[2] In addition to the severance tax case of *Humble v. Calvert*, the *Howard* case has been followed across the land in both the state and federal courts. Many different taxes (although not necessarily considered an income tax by state law) have been upheld under the auspices of the Buck Act, as construed by the *Howard* case. Other cases which have followed the broad interpretation of the Buck Act as enunciated in *Howard* include:

Occupation Tax	*United States v. Lewisburg Area School District*, 539 F.2d 301 (3rd Cir. 1976) *Rountree v. City and County of Denver*, 197 Col. 497, 596 P.2d 793 (Colo. 1979)
License Tax	*City of Portsmouth v. Fred C. Gardner Company Incorporated*, 215 Va. 491, 211 S.E.2d 259 (Va. 1975)
Franchise Tax	*Bullock v. General Dynamics Corp.*, 533 S.W.2d 118 (Civ. App. Tex., *reh'g denied*, 1976) *General Dynamics Corp. v. Bullock*, 547 S.W.2d 255 (Tex. 1976, *reh'g denied*, 1977), *writ denied*, 434 U.S. 1009 (1978).
Severance Tax	*Shell Oil Company v. Secretary, Revenue and Taxation*, No. 91-8635, Division L, Civil District Court for the Parish of Orleans, State of Louisiana, on review from the Board of Tax Appeals for the State of Louisiana, BTA Docket Numbers 3394 and 3395, unreported, 7/6/95. [Taxable period previous to that involving Rosewood Resources, Inc. in this proceeding.]

THE DECISION BY THE SUPREME COURT OF THE UNITED STATES IN *HUMBLE PIPE LINE CO. V. WAGGONNER* AND THE FIFTH CIRCUIT OPINIONS OF *MISSISSIPPI RIVER FUEL CORPORATION V. COCREHAM, MOUTON V. SINCLAIR OIL & GAS COMPANY,* AND *SHELL OIL CO. V. MOUTON,* ARE SUPPORTIVE OF THE DEPARTMENT'S POSITION PERTAINING TO THE APPLICABILITY OF THE BUCK ACT

The intermediate appellate court below, the First Circuit Court of Appeal, State of Louisiana, while addressing both this Court's *Humble* case and the Fifth Circuit Court of Appeal's Barksdale severance tax cases reflected that in each of those cases both this Court and the U.S. Fifth Circuit Court of Appeals referred to the taxation permissibility of a federal enclave afforded to the states by the Buck Act. The court below in this regard held:

> Plaintiffs argue that the Louisiana Severance Tax [LA. R.S. 37:631-646] infringes upon Article I, Section 8, Clause 17 of the Constitution of the United States. Plaintiffs contend that the cases of *Humble Pipe Line Co. v. Waggonner,* 376 U.S. 369, 84 S.Ct. 857, 11 L. Ed. 2d 782 (1964), and *Mississippi River Fuel Corporation v. Cocreham,* 382 F.2d 929 (5th Cir. 1967), *cert. denied,* 390 U.S. 1014, 88 S.Ct. 1264, 20 L. Ed. 2d 164 (1968) and 390 U.S. 1015, 88 S.Ct. 1264, 20 L. Ed. 2d 164 (1968), effectively settled this issue; therefore, the trial court erred in failing to follow the dictates of these cases.
>
> Article I, Section 8, Clause 17 of the United States Constitution permits the United States to obtain exclusive jurisdiction over lands within a State. It provides as follows:
>
> The Congress shall have Power . . .
>
> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of

> particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful Buildings. . . .

In *Waggonner*, the United States Supreme Court rejected Louisiana's attempt to impose an ad valorem tax on the property located on Barksdale Air Force Base, a federal enclave. The Court concluded that Congress had exclusive legislative power within the confines of a federal enclave. However, the Supreme Court noted that "[w]hen Congress has wished to allow a State to exercise jurisdiction to levy certain taxes within a federal enclave it has specifically so stated, as in the Buck Act, 4 U.S.C. §§104-110." *Waggonner*, 84 S.Ct. at 860-861.

In *Cocreham*, the U.S. Fifth Circuit Court of Appeals held that Louisiana could not exact severance taxes on oil and gas produced by the lessee, a private corporation, under mineral lease from the United States on land that was part of Barksdale Air Force Base. In *Cocreham*, 382 F.2d at 938, the court stated that, "[j]ust as the state cannot tax personal property located on Barksdale Field, it cannot impose a severance tax when the incidence of taxation, the severance of minerals from the soil, takes place on a federal enclave, outside the jurisdiction of the State of Louisiana." The *Cocreham* court, like the *Waggoner* court, recognized that Congress could allow a State to exercise jurisdiction to levy taxes within a federal enclave, as in the Buck Act. *Cocreham*, 382 F.2d at 937.

Thus, the exclusive jurisdiction of Congress, as set forth in Article I, Section 8, Clause 17 of

the Constitution of the United States, may be modified by an Act of Congress. The Buck Act is such a modification.

The Buck Act was enacted by Congress in 1940 to enable the states to impose certain taxes including "income taxes" within federal enclaves. Section 106 of this Act reads as follows:

> §106. Same; income tax
>
> (a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.
>
> (b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.

§110(c) of the Buck Act defines "income tax" as "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts."

Thus, the right is specifically granted to the State of Louisiana, as a taxing authority, to levy and collect a tax measured by the income from any party "receiving income from transactions occurring or services performed in such area . . . to the same extent and with the same effect as though such area was not a Federal area." *See Howard v. Commissioners of the Sinking*

Fund of the City of Louisville, 344 U.S. 624, 627-629, 73 S.Ct. 465, 467-468, 97 L. Ed. 617, 621-622 (1953).

* * * *

The trial court determined that the amendment to paragraphs 7 and 8 of LSA-R.S. 47:633 by Acts 1973, Ex. Sess., No.6, changed the severance tax on oil, distillates or other natural resources from a tax based on the quantity of the resource to a tax based on the value. The court concluded that with this amendment, the severance tax became an "income tax" within the meaning of the Buck Act, and did not infringe upon the exclusive rights of Congress to legislate for the federal enclave.

As noted by the court in *Humble Oil and Refining Company v. Calvert*, 478 S.W.2d 926 (Tex. 1972), *cert. denied*, 409 U.S. 967, 93 S.Ct. 293, 34 L. Ed. 2d 234, the broad definition of "income tax" contained in the Buck Act was intended by Congress:

> The Congressional intent is strongly stated in the bill's Senate Report where it is stated that '[t]his definition [of income tax] . . . must of necessity cover a broad field because of the great variations to be found between the different State laws. The intent of your committee in laying down such a broad definition was to include therein any State tax (whether known as a corporate-franchise tax, or business-privilege tax, or any other name) if it is levied on, with respect to, or measured by net income, gross income, or gross receipts.

Therefore, we agree with the trial court's determination that the amendment to the Louisiana Severance Tax rendered it an "income tax" within the meaning of the Buck Act. *See Humble*

Oil and Refining Company, 464 S.W.2d 170, 175-176 (Tex. Civ. App. 1971).

MRT Exploration Co. v. McNamara, 648 So.2d 1108, 1111-1112, 1113 (La. App. 1 Cir. 1994). [Petitioners' Appendix A, Pages 5a-10a.]

CONCLUSION

For these reasons, the Petition for Writ of Certiorari as filed by Mississippi River Transmission Corporation, Murphy Exploration and Production Company, Pennzoil Exploration and Production Company, Total Minatome Corporation, Nóram Energy Corp. and Rosewood Resources, Inc., should be denied.

All of the above and foregoing is thus respectfully submitted.

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No. 95-286

In The

Supreme Court of the United States

October Term, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,

Petitioners,

versus

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal, First Circuit, State Of Louisiana

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APPENDIX A.

STATUTES INVOLVED

Federal Statutes of General Application to Public Lands:

Article I, Section 8, Clause 17, Constitution of the United States:

> The Congress shall have power . . . To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings; . . .

The Buck Act (July 30, 1947, (c.) 389, 61 Stat. 644.) 4 U.S.C. § 106:

> (a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.

The Buck Act (July 30, 1947, (c.) 389, 61 Stat. 645.) 4 U.S.C. § 110:

As used in sections 105-109 of this title –

(a) The term "person" shall have the meaning assigned to it in section 3797 of Title 26.

(b) The term "sales or use tax" means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable.

(c) The term 'income tax' means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

(d) The term "State" includes any Territory or possession of the United States.

(e) The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State.

The Mineral Lands Leasing Act of 1920 (Feb. 25, 1920, c 85, § 32, 41 Stat. 450.) 30 U.S.C. § 189:

§ 189. Rules and regulations; boundary lines; State rights unaffected; taxation

The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this chapter. Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

The Mineral Leasing Act for Acquired Lands (Aug. 7, 1947, c 513, § 3, 61 Stat. 914) 30 U.S.C. § 352:

§ 352. Deposits subject to lease; consent of department heads; lands excluded

Except where lands have been acquired by the United States for the Development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of October 3, 1944 (50 U.S.C. sec. 1611 and the following), all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof.

No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit, or holding a mortgage or deed of trust secured by such lands which is unsatisfied of record, and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered: *Provided*, That nothing in this chapter is intended, or shall be construed, to apply to or in any manner affect any mineral rights, exploration permits, leases or conveyances nor minerals that are or may be in any tidelands; or submerged lands; or in lands underlying the three mile zone or belt involved in the case of the United States of America against the State of California now pending in application for rehearing in the Supreme Court of the United States; or in lands underlying such three mile zone or belt, or the continental shelf, adjacent or littoral to any part of the land within the jurisdiction of the United States of America.

The Mineral Leasing Act for Acquired Lands (Aug. 7, 1947, c 513, § 8, 61 Stat. 915) 30 U.S.C. § 357:

§ 357. State or local government rights; taxation

Nothing contained in this chapter shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties covered by leases issued under this chapter, including the right to levy and collect taxes upon improvements, output of mines, or other

> rights, property, or assets of any lessee of the United States.

The Federal Coal Leasing Amendments Act of 1975 (Aug. 4, 1976, Pub. L. 94-377, § 12(a), 90 Stat. 1090):

> Section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) is amended by striking out "(b) set apart for military or naval purposes, or (c)" and insert in lieu thereof "or (b)".

APPENDIX B.

The Barksdale Congressional Acts:

February 25, 1929, 45 Stat. 1304:

Provided, That the Secretary of War is hereby authorized, when directed by the President, to accept in behalf of the United States, free from encumbrances and without cost to the United States, the title in fee simple to such land as he may deem necessary or desirable, in the vicinity of Shreveport, Louisiana, approximately 25,000 acres, more or less, as a site for an aviation field.

July 1, 1930, 46 Stat. 843:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proviso contained in the project "Shreveport, Louisiana (attack wing)," under section 3 of the Act of February 25, 1929, entitled "An Act to authorize appropriations for construction at military posts, and for other purposes" (45 Stat. 1304), is hereby changed to read as follows: "*Provided*, That the Secretary of War is hereby authorized, when directed by the President, to accept in behalf of the United States and without cost to the United States, the title to such land as he may deem necessary or desirable, in the vicinity of Shreveport, Louisiana, approximately twenty-five thousand acres, more or less, as a site for an aviation field, subject to such encumbrances as the Secretary of War in his discretion determines will not interfere with the use of the property for aviation or military purposes: *Provided further*, That should it be determined from time to time that any existing oil-pipe lines as located in, upon, or across said

lands interfere with the use of said property, the Secretary of War may grant easements for new rights of way, subject to such provisions as he deems advisable, for the relocation of any said pipe lines in such other areas of the property as he determines will not substantially injure the interests of the United States therein."

APPENDIX C.

The Barksdale Louisiana Acts:

The Barksdale Louisiana Acts are pertinently excerpted as follows

> Article 4, Section 12 of the (1921) Constitution [Louisiana Acts 1928, No. 43]:[1]
>
> A JOINT RESOLUTION
>
> Proposing an amendment to Section 12 of Article IV of the Constitution of the State of Louisiana, relative to limitations imposed upon the State and political corporations thereof, and providing for authority in the State, or any political corporation thereof, to donate property to the United States of America for certain purposes.

---

[1] This Joint Resolution, as written, included the word "general" preceding the words "military uses." This was omitted from the Constitutional Amendment. After this Constitutional Amendment, the Louisiana Constitution of 1921, Article IV, Section 12, read, in pertinent part:

> **Donations to United States.** Provided further, that the State, or any agency or political corporation or subdivision thereof may, through the authorized representatives thereof, donate by fee simple title, or otherwise convey, to the United States any lands, property, movable and immovable, rights of way, easements or other servitudes, or any of them, which they now own, or may hereafter acquire by purchase, donation, expropriation or otherwise, for the following public purposes; . . . in connection with airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts, and for military uses; . . . .

Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of all the members elected to each House concurring, That Section 12 of Article IV of the Constitution of the State of Louisiana shall be amended by adding to the end of said Section the following provision:

"Provided further that the State or any political corporation thereof may donate, by fee simple title, to the United States of America any property which it may own, or which it may expropriate or otherwise acquire, for the following public purposes: Airports, flying fields, landing fields, parks, forest preserves, canals, hospitals, agricultural experiment and research stations, military posts and for general military uses; and for the purpose of acquisition and improvement of property for such purposes, may incur debt, issue bonds and levy taxes as otherwise provided in this Constitution."

Section 2. Be it further resolved, etc., That this proposed amendment shall be submitted to the duly qualified electors of the State, in accordance with law, to be voted upon at the general congressional Election to be held on the 6th day of November, 1928, the official ballots to have printed thereon the words:

"For the proposed amendment to Section 12, Article IV, of the Constitution of the State of Louisiana, relative to the donation of property by the State or any political corporation thereof to the United States of America for certain purposes."

and the words:

"Against the proposed amendment to Section 12, Article IV, of the Constitution of the

State of Louisiana, relative to the donation of property by the State or any political corporation thereof to the United States of America for certain purposes."

Approved by the Governor: July 7, 1928.

A true copy:

JAMES J. BAILEY,

Secretary of State.

NOTE: The above was No. 2 on the ballots voted on throughout the State on November 6, 1928, and carried by the following vote:

For .....81,734 votes

Against .....17,553 votes

Louisiana Acts 1928, No. 24:

Section 3. All such municipalities and police juries are hereby authorized and empowered to donate to the United States of America any property which they may own, expropriate or otherwise acquire, for use as airports, flying fields, landing fields, parks, bombing ranges, military posts, hospitals, and for other military purposes.

Louisiana Acts 1928 Extra Session, No. 5:

Section 3. All such municipalities and police juries are hereby authorized and empowered to own and operate and to improve, whether owned by such municipality or parish or not, airports, flying fields, landing fields, parks,

bombing ranges, military posts, hospitals and for other military purposes.

Louisiana Acts 1930, No. 4:[2]

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[2] The Louisiana Legislature passed three (3) additional Acts for the Barksdale transaction. As drawn, the first of these, Acts 1924, No. 39, permitted the expropriation by a municipality of private property both within or without its limits. By Acts 1928, No. 24, this Act (Acts 1924, No. 39) was repealed. Acts 1928, No. 24 provided, among other provisions:

> Section 3. All such municipalities and police juries are hereby authorized and empowered to donate to the United States of America any property which they may own, expropriate or otherwise acquire, for use as airports, flying fields, landing fields, parks, bombing ranges, military posts, hospitals, and for other military purposes.

Acts 1928, No. 24, however, limited the property which could be expropriated to lands within the parishes' or municipalities' limits.

The business leaders of Shreveport approached Governor Huey Long and requested that there be included in the Extra Session of 1928, which had already been called, legislation to correct the defect in the original bill, Acts 1928, No. 24. Governor Huey Long refused to do so. As a *quid pro quo* he wanted the Shreveport Chamber of Commerce to apologize to him, the Ewing newspaper (Shreveport Times) to show him more respect, the Caddo School Board to agree to distribute free school books, and the Caddo Delegation of the Legislature to support the Governor's program in the Extra Session. Huey Long's demands were refused. However, shortly thereafter it was learned that Shreveport had been selected to provide the Barksdale site. An immediate reversal took place - the School Board agreed to distribute the free text books and the Caddo Delegation agreed to support the administration's bills. The foregoing historical data is drawn from *Huey Long* A Biography by T. Harry Williams, pages 328-331.

AN ACT

Donating to the United States of America certain property belonging to the State of Louisiana in Bossier Parish, Louisiana, for an air port[sic], flying field, landing field, military post and military uses, and empowering, authorizing and instructing the Registrar of the State Land Office to execute an act of donation to the United States of America for such purposes.

SECTION 1. WHEREAS, the State of Louisiana owns lands which were formerly the beds of certain navigable bodies of water and of other streams in Bossier Parish, Louisiana, which are within a tract to be donated by the City of Shreveport to the United States of America for an airport, flying field, landing field, military post and military uses; and

WHEREAS, the United States of America will not accept said tract of land without the

---

The third legislative authorization was Acts 1928 Extra Session No. 5. This Act restates the "within or without" language, and also provided as follows:

> Section 3. All such municipalities and police juries are hereby authorized and empowered to own and operate and to improve, whether owned by such municipality or parish or not, airports, flying fields, landing fields, parks, bombing ranges, military posts, hospitals and for other military purposes.

Despite the urgent need for these legislative provisions, all of the land comprising Barksdale was acquired by the City of Shreveport without the need for expropriation, except for a single tract consisting of 18.73 acres. This expropriation proceeding is entitled *City of Shreveport v. Pedro*, 127 So. 865, 170 LA 351 (LA. 1930).

inclusion of this property within said tract belonging to the State of Louisiana, and

WHEREAS, said project is a great benefit to the State of Louisiana, and to the very vital cause of national defense; and

WHEREAS, the State of Louisiana is authorized by its Constitution to donate its property to the United States of America by fee simple title for such purposes; NOW THEREFORE

BE IT ENACTED by the Legislature of Louisiana that all of the beds of the streams, lakes, bayous and lagoons, whether navigable or non-navigable, lying within the following described area,

[Description omitted from this quotation]

situated in Bossier Parish, Louisiana, be and is hereby donated to the United States of America for an air port[sic], flying field, landing,(sic) field, military post and for military purposes.

SECTION II. That the Registrar of the State Land Office of the State of Louisiana is hereby empowered, authorized and instructed to execute an act of donation conveying the lands described in section one hereof, to the United States of America for said purposes, and that upon the execution of said act of donation and its acceptance by the United States of America, the Title in fee simple to the same shall vest in and belong to the United States of America.

Louisiana Acts 1940, No. 75[3]

AN ACT

To authorize the Governor, or the governing body of any political subdivision, of the State of Louisiana, to carry into effect Section 12 of Article IV of the constitution, by donating or otherwise transferring to the United States, lands or other property belonging to the State of Louisiana, or the political subdivisions thereof, for certain purposes, particularly in connection with the present National Defense Program; and to repeal all conflicting laws.

---

[3] Acts 1940, No. 75 was carried into the statutes as LA. R.S. 52:2 and, as such, in pertinent part reads:

> **§ 2 Donations to United States for certain purposes; officers making donations**
>
> The state or any state agency or subdivision may donate or convey to the United States any lands, movable or immovable property, rights of way, or servitudes which they may own or acquire, for use by the United States in connection with:
>
> * * * * *
>
> (4) Airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts and for any military purposes.

This language parallels that of Article 4, Section 12 of the 1921 Constitution, *see* this Appendix page C-1, *ante*; Louisiana Acts 1930, No. 4, Acts 1928, No. 24, and Acts 1928 Extra Session No. 5. *See* this Appendix page C-1 and footnote 2, *ante*. See, also, Reporter's Notes following LA. R.S. 52:2 which read:

> Acts 1930, No. 4, donating land in Bossier Parish to the federal government and authorizing the Registrar of the State Land Office to execute an act of donation to the United States is special in nature and has been deleted from the Revised Statutes. It has not been repealed.

Section 1. Be it enacted by the Legislature of Louisiana, That the State or any agency, branch, municipality or subdivision thereof is hereby authorized through their representatives named in Section 2 hereof to donate by fee simple title, or otherwise convey, to the United States any lands, property, movable and immovable, rights of ways, easements or other servitudes, or any of them, which they now own, or may hereafter acquire by purchase, donation, expropriation or otherwise, for the following public purposes; use, in connection with the improvement and maintenance of the navigation of natural waterways, the construction and improvement and maintenance of artificial navigable waterways, and river and harbor works of every description and kind authorized by any Act or Acts of the Congress of the United States or Federal statutes, or otherwise, and in connection with flood control works of every description and kind so authorized, or in connection with airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts, and for any military uses, particularly in connection with the National Defence Program now being put into operation by the Congress of the United States and the National Administration.

Section 2. That in the case of property owned by the State of Louisiana or any branch or agency thereof the acts authorized by Section 1 hereof shall be performed by the Governor with the consent and approval of the Lieutenant Governor or the Attorney General; and in the case of property owned by a municipality, by the Commission Council or such other similar governing body as may exist in the particular

municipality involved; and in the case of a parish by the Policy Jury thereof; and in the case of any other subdivision of the State of Louisiana by the governing board, council, commission or other similar body as the case may be.

Section 3. That all laws or parts of laws in conflict herewith are hereby repealed.

Approved by the Governor: July 9, 1940.

LA R.S. 52:2

§ 2. Donations to United States for certain purposes; officers making donations

The state or any state agency or subdivision may donate or convey to the United States any lands, movable or immovable property, rights of way, or servitudes which they may own or acquire, for use by the United States in connection with:

* * * *

(4) airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts and for any military purposes.

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APPENDIX D.

Louisiana Severance Tax Provisions:

The Louisiana Severance Tax provisions may be found at LA. R.S. 47:631 et seq. They are here pertinently excerpted as follows:

LA. R.S. 47:631:

> Taxes . . . are hereby levied upon all natural resources severed from the soil or water, including . . . minerals such as oil, gas . . . condensate. . . .

LA. R.S. 47:632:

> These taxes shall be paid by the owner . . . at the time of the severance. . . .

LA. R.S. 47:633:

> The taxes . . . shall be paid at the following rates. . . .
>
> (7)(b) On oil . . . percentum of its value. . . .
>
> (8) On . . . condensate . . . percentum of gross value.
>
> (9) On natural gas . . . cents per thousand cubic feet.

APPENDIX E.

Authority to Protect Oil Deposits Against Drainage – Attorney General's Opinion – 40 Op.A.G. 41

Where oil is being drained from land not subject to the Mineral Leasing Act there is implied authority in the head of the department or agency having jurisdiction to take protective measures, including the making of necessary contracts.

If it is found advisable or more convenient for the protective action to be taken by another department or agency it is within the power of the President to transfer the necessary authority and jurisdiction.

April 2, 1941.

THE PRESIDENT.

MY DEAR MR. PRESIDENT: I have the honor to confirm the view expressed by me at a recent cabinet meeting that there is implied authority in the Executive branch to take protective measures in cases where lands acquired by the United States for a specific public purpose are found to contain oil which is being drained by adjoining owners – such lands not being subject to the Mineral Leasing Act of February 25, 1990 (41 Stat. 437), as amended (U.S.C., title 30, sec. 181).

It is my opinion that the authority to take the protective action is vested in the department or agency charged with jurisdiction over the land involved, and includes the making of any necessary contracts.

If, however, it should be determined in particular cases that it is advisable or more convenient for the protective action to be taken by another department or agency it is within your

power to transfer to the latter department or agency by Executive order the necessary authority, duty and jurisdiction with respect to the oil, to be exercised, however, upon the condition and to the extent that there is no interference with the primary use of the land.

Respectfully,

ROBERT H. JACKSON.

Official Opinion of the Attorney General of the United States advising the President and Heads of Departments in relation to Their Official Duties, Volume 40, page 41.

APPENDIX F.

Executive Orders:

1. Executive Order 9146

AUTHORIZING THE SECRETARY OF THE INTERIOR TO WITHDRAW AND RESERVE PUBLIC LANDS

By virtue of the authority vested in me by the act of June 25, 1910, c. 421, 36 Stat. 847, and as President of the United States, I hereby authorize the Secretary of the Interior to sign all orders withdrawing or reserving public lands of the United States, and all orders revoking or modifying such orders: *Provided,* that all such orders shall have the prior approval of the Director of the Bureau of the Budget and the Attorney General, as now required with respect to proposed Executive Orders by Executive Order No. 7298 of February 18, 1936, and shall be submitted to the Division of the Federal Register for filing and publication: *Provided, further,* that no such order which affects lands under the administrative jurisdiction of any executive department or agency of the Government, other than the Department of the Interior, shall be signed by the Secretary of the Interior without the prior concurrence of the head of the department or agency concerned.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
April 24, 1942.

[F.R. Doc. 42-3682. Filed, April 25, 1942; 11:04 a.m.] 7 F.R. 3067, The Act of June 25, 1910 was codified as 43 U.S.C.A. 141 *et seq.*

2. Executive Order 9337

AUTHORIZING THE SECRETARY OF THE INTERIOR TO WITHDRAW AND RESERVE LANDS OF THE PUBLIC DOMAIN AND OTHER LANDS OWNED OR CONTROLLED BY THE UNITED STATES

By virtue of the authority vested in me by the act of June 25, 1910, ch. 421, 36 Stat. 847, and as President of the United States, it is ordered as follows:

Section 12. The Secretary of the Interior is hereby authorized to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States to the same extent that such lands might be withdrawn or reserved by the President, and also, to the same extent, to modify or revoke withdrawals or reservations of such lands: *Provided*, That all orders of the Secretary of the Interior issued under the authority of this order shall have the prior approval of the Director of the Bureau of the Budget and the Attorney General, as now required with respect to proposed Executive orders by Executive Order No. 7298 of February 18, 1936, and shall be submitted to the Division of the Federal Register for filing and publication: *Provided, further*, That no such order which affects lands under the administrative jurisdiction of any executive department or agency of the Government, other than the Department of the Interior, shall be issued by the Secretary of the Interior without the prior concurrence of the head of the department or agency concerned.

Section 2. This order supersedes Executive Order No. 9146 of April 24, 1942, entitled

"Authorizing the Secretary of the Interior to Withdraw and Reserve Public Lands".

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
April 24, 1943.

[F.R. Doc. 43-6460; Filed, April 265, 1943; 3:15 p.m.] 8 F.R. 5516.

Executive Order No. 10355

May 28, 1952, 17 F.R. 4831

DELEGATING TO THE SECRETARY OF THE INTERIOR THE AUTHORITY OF THE PRESIDENT TO WITHDRAW OR RESERVE LANDS OF THE UNITED STATES FOR PUBLIC PURPOSES

By virtue of the authority vested in me by section 301 of title 3 of the United States Code (section 10 of Public Law 248, 82d Congress) [3 U.S.C.A. § 301], and as President of the United States, it is ordered as follows:

Section 1. (a) Subject to the provisions of subsections (b), (c), and (d) of this section, I hereby delegate to the Secretary of the Interior the authority vested in the President by section 1 of the act of June 25, 1910, ch. 421, 36 Stat. 847 (43 U.S.C. 141) [43 U.S.C.A. § 141], and the authority otherwise vested in him to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States in the continental United States or Alaska for public purposes, including the authority to modify or revoke withdrawals and reservations of such lands heretofore or hereafter made.

(b) All orders issued by the Secretary of the Interior under the authority of this order shall be designated as public land orders and shall be submitted to the Division of the Federal Register, General Services Administration, for filing and for publication in the FEDERAL REGISTER.

(c) No order affecting land under the administrative jurisdiction of any executive department or agency of the Government other than the Department of the Interior shall be issued by the Secretary of the Interior under the authority of this order without the prior approval or concurrence, so far as the order affects such land, of the head of the department or agency concerned, or of such officer of the department or agency concerned as the head thereof may designate for such purpose: *Provided*, that such officer is required to be appointed by the President by and with the advice and consent of the Senate.

(d) Any disagreement between two or more executive departments or agencies with respect to any proposed withdrawal or reservation shall be referred to the Director of the Bureau of the Budget for consideration and adjustment. The Director may, in his discretion, subject the matter to the President for his determination.

Sec. 2. The Secretary of the Interior is authorized to issue such rules and regulations, and to prescribe such procedures, as he may from time to time deem necessary or desirable for the exercise of the authority delegated to him by this order.

Sec. 3. The Secretary of the Interior is authorized to redelegate the authority delegated to him by this order to one or more of the following-designated officers: the Under Secretary of the Interior and the Assistant Secretaries of the Interior.

Sec. 4. This order supersedes Executive Order No. 9337 of April 24, 1943, entitled "Authorizing the Secretary of the Interior to Withdraw and Reserve Lands of the Public Domain and Other Lands Owned or Controlled by the United States."

HARRY S. TRUMAN

THE WHITE HOUSE,
May 26, 1952.

17 F.R. 4831.

APPENDIX G.

The Barksdale Public Land Orders:

TITLE 43 – PUBLIC LANDS: INTERIOR
Chapter 1 – Bureau of Land Management,
Department of the Interior

Appendix – Public Land Orders

[Public Land Order 701]

LOUISIANA

Transferring Jurisdiction over the Oil
and Gas Deposits in Certain Lands
Owned by the United States

Whereas the hereinafter-described lands, title to which has been acquired by the United States, comprising the Barksdale Bombing and Gunnery Range portion of the Barksdale Air Force Base Reservation, Louisiana, are reported to be subject to drainage of their oil and gas deposits by wells on adjacent lands in private ownership; and

Whereas it is necessary in the public interest that such protective action be taken as will prevent loss to the United States by reason of the drainage or threatened drainage from the said lands; and

Whereas, in order to facilitate such action, it is considered advisable that jurisdiction over the oil and gas deposits in such lands be transferred from the Department of the Air Force to the Department of the Interior; and

Whereas such transfer has the concurrence of the Secretary of the Air Force:

Now, therefore, by virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

1. The jurisdiction over the oil and gas deposits in the following-described lands is hereby transferred from the Department of the Air Force to the Department of the Interior:

LOUISIANA MERIDIAN

T. 17 N, R. 11 W.,
Sec. 6, W1/2 and W1/2E1/2
Sec. 7, W1/2 and W1/2E1/2

T. 18 N, R. 11 W.,
Sec. 31.

T. 17 N, R. 12 W.,
Sec. 10, SE1/4:
Secs. 11 and 12.

2. The Secretary of the Interior shall take such action as may be necessary to protect the United States from loss on account of drainage or threatened drainage of oil and gas from such lands.

3. The jurisdiction of the Department of the Interior over such lands shall be subject to the primary jurisdiction of the Department of the Air Force over the lands for Air Force purposes.

4. No oil and gas lessee shall use or invade, for any purpose, the surface of the W 1/2W1/2 sec. 5, W1/2NW1/4 sec. 7, T.17 N, R. 11W., W1/2 sec. 31, T. 18 N, R. 11W., NE1/4SE1/4, NE 1/4SE1/4SE1/4, W1/2 SE1/4SE1/4, W1/2SE1/4 sec. 10, N 1/2, NW1/4SW1/4 sec. 11, or N1/2 sec. 11, or N1/2 sec. 12, T. 17 N., R. 12W.

5. Prior to any advertisement for bids the Department of the Air Force shall have the opportunity to indicate the further reservations and restrictions that are to be included in the proposed lease or leases.

6. Prior to execution of any lease or development authorized by the Department of the Interior the approval of the Department of the Air Force is to be obtained to assure that there is no interference with the primary use of Barksdale Air Force Base.

7. All moneys received as royalties under leases, or otherwise, on account of oil and gas extracted from such land shall be paid into the Treasury of the United States and credited to miscellaneous receipts.

OSCAR L. CHAPMAN,
Secretary of the Interior.

February 21, 1951.

[F.R. Doc. 51-2678; Filed, Feb.27, 1951; 8:47 a.m.] 16 F.R. 1901-02.

TITLE 43 – PUBLIC LANDS: INTERIOR

Chapter 1 – Bureau of Land Management Department of the Interior

Appendix – Public Land Orders

[Public Land Order 884]

LOUISIANA

TRANSFERRING JURISDICTION OVER THE OIL AND GAS DEPOSITS IN CERTAIN LANDS OWNED BY THE UNITED STATES

Whereas the hereinafter-described lands, title to which has been acquired by the United States, comprising a part of the Barksdale Bombing and Gunnery Range portion of the Barksdale Air Force Base Reservation, Louisiana, are reported to be subject to drainage of their oil and gas deposits by wells on adjacent lands in private ownership; and

Whereas it is necessary in the public interest that such protective action be taken as will prevent loss to the United States by reason of the drainage or threatened drainage from the said lands; and

Whereas, in order to facilitate such action, it is considered advisable that jurisdiction over the oil and gas deposits in such lands be transferred from the Department of the Air Force to the Department of the Interior; and

Whereas such transfer has the concurrence of the Secretary of the Air Force:

Now, therefore, by virtue of the authority vested in the President and pursuant to Executive Order No.10355 of May 26, 1952 (17 F.R. 4831) it is ordered as follows:

1. The jurisdiction over the oil and gas deposits in the following-described lands is hereby transferred from the Department of the Air Force to the Department of the Interior:

LOUISIANA MERIDIAN

T. 18 N., R. 11 W.,
Sec. 19, SW1/4 and S1/2SE1/4, those portions lying south of the south right-of-way line of the Vicksburg, Shreveport, and Pacific Railway Company.
Sec. 30.

T. 18 N, R. 12 W.,
Sec. 23, S1/2, that portion lying south of the south right-of-way line of the Vicksburg, Shreveport, and Pacific Railway Company;
Sec. 24, S1/2, that portion lying south of the south right-of-way line of the Vicksburg, Shreveport, and Pacific Railway Company;
Sec. 25, N1/2;
Sec. 26, NE1/4.

The areas described aggregate approximately 1,900 acres.

2. The Secretary of the Interior shall take such action as may be necessary to protect the United States from loss on account of drainage or threatened drainage of oil and gas from such lands.

3. The jurisdiction of the Department of the Interior over such lands shall be subject to the primary jurisdiction of the Department of the Air Force over the lands for Air Force purposes.

4. No oil and gas lessee shall use or invade, for any purpose, the surface of the SW 1/4NW1/4, W1/2SW1/4 sec. 30, T. 18 N., R. 11 W., S 1/2N1/2 sec. 25 and S1/2NE1/4 sec. 26, T. 18 N., R. 12 W.

5. Prior to any advertisement for bids the Department of the Air Force shall have the opportunity to indicate the further reservations and restrictions that are to be included in the proposed lease or leases.

6. All moneys received as royalties under leases, or otherwise, on account of oil and gas extracted from such land shall be paid into the Treasury of the United States and credited to miscellaneous receipts.

JOEL D. WOLFSOHN,
Assistant Secretary of the Interior.

February 5, 1953.

[F.R. Doc. 53-1365 Filed, Feb.10, 1953; 8:45 a.m.] 18 F.R. 846.

TITLE 43 – PUBLIC LANDS: INTERIOR

Chapter 1 – Bureau of Land Management Department of the Interior

Appendix – Public Land Orders

(Public Land Order 1807)

[51263]

LOUISIANA

TRANSFERRING JURISDICTION OVER THE OIL AND GAS DEPOSITS IN CERTAIN LANDS OWNED BY THE UNITED STATES

Whereas the hereinafter-described lands, title to which has been acquired by the United States, comprising a part of the Barksdale Bombing and Gunnery Range portion of the Barksdale Air Force Base Reservation, Louisiana, are reported to be subject to drainage of their oil and gas deposits by wells on adjacent lands in private ownership; and

Whereas it is necessary in the public interest that such protective action be taken as will prevent loss to the United States by reason of the drainage or threatened drainage from the said lands; and

Whereas, in order to facilitate such action, it is considered advisable that jurisdiction over the oil and gas deposits in such lands be transferred from the Department of the Air Force to the Department of the Interior; and

Whereas such transfer has the concurrence of the Secretary of the Air Force:

Now, therefore, by virtue of the authority vested in the President and pursuant to Executive Order No.10355 of May 26, 1952 it is ordered as follows:

1. The jurisdiction over the oil and gas deposits in the following-described lands is hereby transferred from the Department of the Air Force to the Department of the Interior:

LOUISIANA MERIDIAN

T. 18 N., R. 12 W.,
Sec. 26, NW1/4.

The area described aggregates approximately 160.30 acres.

2. The Secretary of the Interior shall take such action as may be necessary to protect the United States from loss on account of drainage or threatened drainage of oil and gas from such lands.

3. The jurisdiction of the Department of the Interior over such lands shall be subject to the primary jurisdiction of the Department of the Air Force over the lands for Air Force purposes.

4. No oil and gas lessee shall use or invade, for any purpose, the surface of the lands.

5. All moneys received as royalties under leases, or otherwise, on account of oil and gas extracted from such land shall be paid into the

Treasury of the United States and credited to miscellaneous receipts.

ROGER ERNST,
Assistant Secretary of the Interior.

February 27, 1959.

[F.R. Doc. 59-1891; Filed, Mar. 4, 1959; 8:47 a.m.] 24 F.R. 1651.

TITLE 43 – PUBLIC LANDS: INTERIOR
Chapter 1 – Bureau of Land Management, Department of the Interior
Appendix – Public Land Orders

[Public Land Order 2178]
[51263]

LOUISIANA

Transferring Jurisdiction of the Oil and Gas Deposits in Certain Lands Owned by the United States; Amending Public Land Order Nos. 701, 884, and 1807

Whereas the hereinafter-described lands, title to which has been acquired by the United States, comprising a portion of the Barksdale Air Force Base East Reservation, are reported to be subject to drainage of their oil and gas deposits by wells on adjacent lands in private ownership; and

Whereas it is necessary in the public interest that such protective action be taken as will prevent loss to the United States by reason of the drainage or threatened drainage from the said lands; and

Whereas, in order to facilitate such action, it is considered advisable that jurisdiction over the oil and gas deposits in such lands be transferred from the Department of the Air Force to the Department of the Interior; and

Whereas such transfer has the concurrence of the Secretary of the Air Force:

Now, therefore, by virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. The jurisdiction over the oil and gas deposits in the following-described lands is hereby transferred from the Department of the Air Force to the Department of the Interior:

LOUISIANA MERIDIAN

T. 17 N, R. 12 W.
Secs. 1, 2, 3, 4 and 9;
Sec. 10, N1/2 and SW1/4.

T. 18 N, R. 12 W.
Sec. 22, S1/2 (that part lying south of the south right-of-way line of the Illinois Central Railway Company);
Sec. 25, S1/2;
Sec. 26, S1/2;
Sec. 27;
Sec. 28, E1/2;
Sec. 33, E1/2;
Secs. 34, 35 and 36.

The areas described aggregate approximately 7,840 acres.

2. The Secretary of the Interior shall take such action as may be necessary to protect the United States from loss on account of drainage or threatened drainage of oil and gas from such lands.

3. The jurisdiction of the Department of the Interior over such lands shall be subject to the primary jurisdiction of the Department of the Air Force over the lands for Air Force purposes.

4. Prior to any advertisement for bids the Department of the Air Force shall have the opportunity to indicate the further reservations and restrictions that are to be included in the proposed lease or leases.

5. Prior to execution of any lease or development authorized by the Department of the Interior the approval of the Department of the Air Force is to be obtained to assure that there is no interference with the primary use of Barksdale Air Force Base.

6. Public Land Orders No. 701 of February 21, 1951, No. 884 of February 5, 1953, and No. 1807 of February 27, 1959, are hereby amended to delete paragraphs No. 4 of each order, prohibiting surface use of the following-described lands:

PUBLIC LAND ORDER NO. 701

T. 17 N, R. 11 W.,
Sec. 6, W1/2 W1/2;
Sec. 7, W1/2 NW1/4;

T. 18 N, R. 11 W.,
Sec. 31, W1/2

T. 17 N, R. 12 W.,
Sec. 10, NE1/4SE1/4, NE1/4SE1/4SE1/4;
W1/2SE1/4SE1/4 and W1/2SE1/4;
Sec. 11, N1/2 and NW1/4SW1/4;
Sec. 12, N1/2.

PUBLIC LAND ORDER NO. 884

T. 18 N, R. 12 W.,
Sec. 30, SW1/4NW1/4 and W1/2SW1/4

T. 18 N, R. 12 W.,
Sec. 25, S1/2N1/2;
Sec. 26, S1/2NE1/4.

PUBLIC LAND ORDER NO. 1807

T. 18 N, R. 12 W.,
Sec. 26, NW1/4

FRED A SEATON,
Secretary of the Interior.

August 10, 1960.

[F.R. Doc. 60-7658; Filed, Aug. 16, 1960; 8:45 a.m.] 25 F.R. 7878.

General Statutory Provisions

Louisiana Acts 1892, No. 12 §§ 1, 2, provided as follows:

1. The United States shall have power to purchase or condemn in the manner prescribed by law, upon making just compensation therefor, any land in the State of Louisiana, not already in use for public purposes, required for custom houses, court houses, arsenals, national cemeteries, or for other purposes of the government of the United States.

2. The United States may enter upon and occupy any land which may have been or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said State, and the service of civil process of said State therein, and shall hold the same exempt from all State, parochial, municipal or other taxation.

Louisiana Acts 1942, No. 31, § 1.

§ 1. Consent of state to acquisition

The United States, in accordance with the seventeen clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of Louisiana on the property acquired by the United States.

AS CARRIED INTO THE REVISED STATUTES OF 1950, LA R.S. 52:1

§ 1. Consent of state to acquisition

The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana for the purposes of the federal government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property.The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.

The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States.

Special Barksdale Statutory Provisions in Pertinent Part

Louisiana Constitution of 1921, Article IV, Section 12 [Louisiana Acts 1928, No. 43]:

Donations to United States.

Provided further, that the State, or any agency or political corporation or subdivision thereof may, through the authorized representatives thereof, donate by fee simple title or otherwise convey, to the United States any lands, property, movable and immovable, rights of way, easements or other servitudes, or any of them, which they now own, or may hereafter acquire by purchase, donation, expropriation or otherwise, for the following public purposes; . . . in connection with airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts, and for military uses; . . ..

Louisiana Acts 1928, No. 24:

Section 3. All such municipalities and police juries are hereby authorized and empowered to donate to the United States of America any property which they may own, expropriate or otherwise acquire, for use as airports, flying fields, landing fields, parks, bombing ranges, military posts, hospitals, and for other military purposes.

Louisiana Acts 1928 Extra Session, No. 5:

Section 3. All such municipalities and police juries are hereby authorized and empowered to own and operate and to improve, whether owned by such municipality or parish or not, airports, flying fields, landing fields, parks, bombing ranges, military posts, hospitals and for other military purposes.

Louisiana Acts 1930, No. 4:

BE IT ENACTED by the Legislature of Louisiana that all of the beds of the streams, lakes, bayous and lagoons, whether navigable or non-navigable, lying within the following described area,

[Description omitted from this quotation]

situated in Bossier Parish, Louisiana, be and is hereby donated to the United States of America for an air port[sic], flying field, landing,(sic) field, military post and for military purposes.

Louisiana Acts 1940, No. 75:

§2 Donations to United States for certain purposes; officers making donations

The state or any state agency or subdivision may donate or convey to the United States any lands, movable or immovable property, rights of way, or servitudes which they may own or acquire, for use by the United States in connection with:

* * * * *

(4) Airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts and for any military purposes.

AS CARRIED INTO THE REVISED STATUTES OF 1950, LA R.S. 52:2

§2. Donations to United States for certain purposes; officers making donations

The state or any state agency or subdivision may donate or convey to the United States any lands, movable or immovable property, rights of way, or servitudes which they may own or acquire, for use by the United States in connection with:

(1) The improvement and maintenance of the navigation of natural waterways;

(2) The construction, improvement, and maintenance of artificial navigable waterways, river and harbor works;

(3) Flood control works;

(4) airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts and for any military purposes.

In the case of property owned by Louisiana or any state branch or agency, the transfer or conveyance shall be performed by the governor with the consent and approval of the lieutenant governor or the attorney general. The commission council or other governing body of a municipality shall transfer or convey property owned by a municipality. In the case of a parish the parish governing authority shall transfer or convey the property and in the case of any other subdivision of the state the governing body shall transfer the property.

PETITIONERS' RELIANCE ON LA. R.S. 52:1, AS SOURCED FROM ACTS 1892, No.12 AND ACTS 1942, No. 31, IS MISPLACED.

As can readily be seen from the foregoing, the words "airports" "flying fields" "landing fields" "military posts" and "military uses 'or purposes'" is in all five of these Barksdale related Acts, and these words were, in turn, carried over into the Revised Statutes of 1950, as LA. R.S. 52:2.

However, none of these words, "airports" "flying fields" "landing fields" "military posts" and "military uses 'or purposes'", appear anywhere in Louisiana Acts 1892, No. 12, nor were they in Louisiana Acts 1942, No. 31, nor were they in the carryover of those two Louisiana Acts into the Revised Statutes of 1950, as LA. R.S. 52:1

Nothing in the statutory provisions authorizing and implementing the donation of the Barksdale property to the federal government mentions any waiver, temporary or permanent, of the power to levy a non-discriminatory severance tax on oil, gas and condensate extracted and produced from the bowels of the earth underlying Barksdale by private lessees such as the petitioners here.